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NOTE: CHANGES HAVE BEEN
MADE TO THIS DOCUMENT

See Section 3

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19 *Transworld Systems Inc.*

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA

22 JASON PHIPPS,)	Case No. 2:19-cv-00886-JAK-AFM
23 Plaintiff,)	
24 vs.)	
25)	STIPULATED PROTECTIVE ORDER
26 TRANSWORLD SYSTEMS INC.,)	
27)	
28 Defendant.)	

Plaintiff Jason Phipps (“Plaintiff”) and Defendant Transworld Systems, Inc. (“TSI”) (collectively the “Parties”), through counsel and pursuant to the Federal Rules of Civil Procedure, hereby stipulate to the following Protective Order in this

1 case:

2 1. PURPOSES AND LIMITATIONS

3 Disclosure and discovery activity in this action are likely to involve
4 production of confidential, proprietary, or private information for which special
5 protection from public disclosure and from use for any purpose other than
6 prosecuting this litigation may be warranted. Accordingly, the parties hereby
7 stipulate to and petition the court to enter the following Stipulated Protective
8 Order. The parties acknowledge that this Order does not confer blanket protections
9 on all disclosures or responses to discovery and that the protection it affords from
10 public disclosure and use extends only to the limited information or items that are
11 entitled to confidential treatment under the applicable legal principles. The parties
12 further acknowledge, as set forth in Section 12.3, below, that this Stipulated
13 Protective Order does not entitle them to file confidential information under seal;
14 Civil Local Rule 79-5 sets forth the procedures that must be followed and the
15 standards that will be applied when a party seeks permission from the court to file
16 material under seal.
17

18 2. DEFINITIONS

19 2.1 Challenging Party: a Party or Non-Party that challenges the
20 designation of information or items under this Order.

21 2.2 “CONFIDENTIAL” Information or Items: Disclosure or Discovery
22 Material that reflects: a) personal information protected by state or federal privacy
23 laws; b) non-public proprietary information which, if disclosed, would result in
24 competitive injury; or c) trade secrets as defined under state or federal law.

25 2.3 Counsel (without qualifier): Outside Counsel of Record and House
26 Counsel (as well as their support staff).

27 2.4 Designating Party: a Party or Non-Party that designates information
28

1 or items that it produces in disclosures or in responses to discovery as
2 “CONFIDENTIAL.”

3 2.5 Disclosure or Discovery Material: all items or information, regardless
4 of the medium or manner in which it is generated, stored, or maintained (including,
5 among other things, testimony, transcripts, and tangible things), that are produced
6 or generated in disclosures or responses to discovery in this matter.

7 2.6 Expert: a person with specialized knowledge or experience in a
8 matter pertinent to the litigation who has been retained by a Party or its counsel to
9 serve as an expert witness or as a consultant in this action.

10 2.7 House Counsel: attorneys who are employees of a party to this action.
11 House Counsel does not include Outside Counsel of Record or any other outside
12 counsel.

13 2.8 Non-Party: any natural person, partnership, corporation, association,
14 or other legal entity not named as a Party to this action.

15 2.9 Outside Counsel of Record: attorneys who are not employees of a
16 party to this action, but are retained to represent or advise a party to this action and
17 have appeared in this action on behalf of that party or are affiliated with a law firm
18 which has appeared on behalf of that party.

19 2.10 Party: any party to this action, including all of its officers, directors,
20 employees, consultants, retained experts, and Outside Counsel of Record (and their
21 support staffs).

22 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this action.

24 2.12 Professional Vendors: persons or entities that provide litigation
25 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
26 demonstrations, and organizing, storing, or retrieving data in any form or medium)
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28

1 and their employees and subcontractors.

2 2.13 Protected Material: any Disclosure or Discovery Material that is
3 designated as "CONFIDENTIAL."

4 2.14 Receiving Party: a Party that receives Disclosure or Discovery
5 Material from a Producing Party.

6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only
8 Protected Material (as defined above), but also (1) any information copied or
9 extracted from Protected Material; (2) all copies, excerpts, summaries, or
10 compilations of Protected Material; and (3) any testimony, conversations, or
11 presentations by Parties or their Counsel that might reveal Protected Material.
12 However, the protections conferred by this Stipulation and Order do not cover the
13 following information: (a) any information that is in the public domain at the time
14 of disclosure to a Receiving Party or becomes part of the public domain after its
15 disclosure to a Receiving Party as a result of publication not involving a violation
16 of this Order, including becoming part of the public record through trial or
17 otherwise; and (b) any information known to the Receiving Party prior to the
18 disclosure or obtained by the Receiving Party after the disclosure from a source
19 who obtained the information lawfully and under no obligation of confidentiality to
20 the Designating Party. Any use of Protected Material at trial shall be governed by a
21 ~~separate agreement or order~~ orders of the trial judge.

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees
25 otherwise in writing or a court order otherwise directs. Final disposition shall be
26 deemed to be the later of (1) dismissal of all claims and defenses in this action,
27
28

1 with or without prejudice; and (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
3 including the time limits for filing any motions or applications for extension of
4 time pursuant to applicable law.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or Non-Party that designates information or items for protection under
8 this Order must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. The Designating Party must designate for
10 protection only those parts of material, documents, items, or oral or written
11 communications that qualify – so that other portions of the material, documents,
12 items, or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this Order.
14

15 Mass, indiscriminate, or routinized designations are prohibited. Designations
16 that are shown to be clearly unjustified or that have been made for an improper
17 purpose (e.g., to unnecessarily encumber or retard the case development process or
18 to impose unnecessary expenses and burdens on other parties) expose the
19 Designating Party to sanctions.

20 If it comes to a Designating Party's attention that information or items that it
21 designated for protection do not qualify for protection, that Designating Party must
22 promptly notify all other Parties that it is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in
24 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
25 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
26 under this Order must be clearly so designated before the material is disclosed or
27 produced.
28

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic
3 documents, but excluding transcripts of depositions or other pretrial or trial
4 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to
5 each page that contains protected material. If only a portion or portions of the
6 material on a page qualifies for protection, the Producing Party also must clearly
7 identify the protected portion(s) (e.g., by making appropriate markings in the
8 margins).

9
10 A Party or Non-Party that makes original documents or materials available
11 for inspection need not designate them for protection until after the inspecting
12 Party has indicated which material it would like copied and produced. During the
13 inspection and before the designation, all of the material made available for
14 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
15 identified the documents it wants copied and produced, the Producing Party must
16 determine which documents, or portions thereof, qualify for protection under this
17 Order. Then, before producing the specified documents, the Producing Party must
18 affix the “CONFIDENTIAL” legend to each page that contains Protected Material.
19 If only a portion or portions of the material on a page qualifies for protection, the
20 Producing Party also must clearly identify the protected portion(s) (e.g., by making
21 appropriate markings in the margins).

22 (b) for testimony given in deposition or in other pretrial or trial
23 proceedings, that the Designating Party identify on the record, before the close of
24 the deposition, hearing, or other proceeding, all protected testimony.

25 (c) for information produced in some form other than documentary and
26 for any other tangible items, that the Producing Party affix in a prominent place on
27 the exterior of the container or containers in which the information or item is
28

1 stored the legend "CONFIDENTIAL." If only a portion or portions of the
2 information or item warrant protection, the Producing Party, to the extent
3 practicable, shall identify the protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the Designating Party's right to secure protection under this Order for such
7 material. Upon timely correction of a designation, the Receiving Party must make
8 reasonable efforts to assure that the material is treated in accordance with the
9 provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time. Unless a prompt challenge to a
14 Designating Party's confidentiality designation is necessary to avoid foreseeable,
15 substantial unfairness, unnecessary economic burdens, or a significant disruption
16 or delay of the litigation, a Party does not waive its right to challenge a
17 confidentiality designation by electing not to mount a challenge promptly after the
18 original designation is disclosed.

19 20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process by providing written notice of each designation it is challenging
22 and describing the basis for each challenge. To avoid ambiguity as to whether a
23 challenge has been made, the written notice must recite that the challenge to
24 confidentiality is being made in accordance with this specific paragraph of the
25 Protective Order. The parties shall attempt to resolve each challenge in good faith
26 and must begin the process by conferring directly (in voice to voice dialogue; other
27 forms of communication are not sufficient) within 14 days of the date of service of
28 notice. In conferring, the Challenging Party must explain the basis for its belief that

1 the confidentiality designation was not proper and must give the Designating Party
2 an opportunity to review the designated material, to reconsider the circumstances,
3 and, if no change in designation is offered, to explain the basis for the chosen
4 designation. A Challenging Party may proceed to the next stage of the challenge
5 process only if it has engaged in this meet and confer process first or establishes
6 that the Designating Party is unwilling to participate in the meet and confer process
7 in a timely manner.

8
9 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
10 court intervention, the Designating Party shall file and serve a motion to retain
11 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
12 79-5, if applicable) within 21 days of the initial notice of challenge or within 14
13 days of the parties agreeing that the meet and confer process will not resolve their
14 dispute, whichever is earlier. Each such motion must be accompanied by a
15 competent declaration affirming that the movant has complied with the meet and
16 confer requirements imposed in the preceding paragraph. In addition, the
17 Challenging Party may file a motion challenging a confidentiality designation at
18 any time if there is good cause for doing so, including a challenge to the
19 designation of a deposition transcript or any portions thereof. Any motion brought
20 pursuant to this provision must be accompanied by a competent declaration
21 affirming that the movant has complied with the meet and confer requirements
22 imposed by the preceding paragraph. In any such motion, the burden shall be on
23 the Designating Party as to why the disputed designation is proper and should be
24 enforced.

25
26 Frivolous challenges, and those made for an improper purpose (e.g., to
27 harass or impose unnecessary expenses and burdens on other parties) may expose
28 the Challenging Party to sanctions. All parties shall continue to afford the material

1 in question the level of protection to which it is entitled under the Producing
2 Party's designation until the court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 case only for prosecuting, defending, or attempting to settle this litigation. Such
7 Protected Material may be disclosed only to the categories of persons and under
8 the conditions described in this Order. When the litigation has been terminated, a
9 Receiving Party must comply with the provisions of section 13 below (FINAL
10 DISPOSITION).

11
12 Protected Material must be stored and maintained by a Receiving Party at a
13 location and in a secure manner that ensures that access is limited to the persons
14 authorized under this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
16 otherwise ordered by the court or permitted in writing by the Designating Party, a
17 Receiving Party may disclose any information or item designated
18 "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this action, as
20 well as employees of said Outside Counsel of Record to whom it is reasonably
21 necessary to disclose the information for this litigation and who have signed the
22 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
23 A;

24 (b) the officers, directors, and employees (including House Counsel) of
25 the Receiving Party to whom disclosure is reasonably necessary for this litigation
26 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
27 A);
28

1 (c) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this litigation and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants,
6 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
7 for this litigation and who have signed the “Acknowledgment and Agreement to
8 Be Bound” (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary and who have signed the “Acknowledgment and Agreement
11 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
12 ordered by the court. Pages of transcribed deposition testimony or exhibits to
13 depositions that reveal Protected Material must be separately bound by the court
14 reporter and may not be disclosed to anyone except as permitted under this
15 Stipulated Protective Order;

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information.

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
19 IN OTHER LITIGATION

20 If a Party is served with a subpoena or a court order issued in other litigation
21 that compels disclosure of any information or items designated in this action as
22 “CONFIDENTIAL,” that Party must:

23 (a) promptly notify in writing the Designating Party. Such notification
24 shall include a copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or
26 order to issue in the other litigation that some or all of the material covered by the
27
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1 subpoena or order is subject to this Protective Order. Such notification shall
2 include a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served
6 with the subpoena or court order shall not produce any information designated in
7 this action as “CONFIDENTIAL” before a determination by the court from which
8 the subpoena or order issued, unless the Party has obtained the Designating Party’s
9 permission. The Designating Party shall bear the burden and expense of seeking
10 protection in that court of its confidential material – and nothing in these
11 provisions should be construed as authorizing or encouraging a Receiving Party in
12 this action to disobey a lawful directive from another court.
13

14 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
15 PRODUCED IN THIS LITIGATION

16 (a) At a Non-Party’s election, the terms of this Order are applicable to
17 information produced by a Non-Party in this action and designated as
18 “CONFIDENTIAL.” Such information produced by Non-Parties in connection
19 with this litigation is protected by the remedies and relief provided by this Order.
20 Nothing in these provisions should be construed as prohibiting a Non-Party from
21 seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-
27 Party that some or all of the information requested is subject to a confidentiality
28

1 agreement with a Non-Party;

2 (2) promptly provide the Non-Party with a copy of the Stipulated
3 Protective Order in this litigation, the relevant discovery request(s), and a
4 reasonably specific description of the information requested; and

5 (3) make the information requested available for inspection by the
6 Non-Party.

7 (c) If the Non-Party fails to object or seek a protective order from this
8 court within 14 days of receiving the notice and accompanying information, the
9 Receiving Party may produce the Non-Party's confidential information responsive
10 to the discovery request. If the Non-Party timely seeks a protective order, the
11 Receiving Party shall not produce any information in its possession or control that
12 is subject to the confidentiality agreement with the Non-Party before a
13 determination by the court. Absent a court order to the contrary, the Non-Party
14 shall bear the burden and expense of seeking protection in this court of its
15 Protected Material.
16

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a Receiving Party learns that, by inadvertence or otherwise, it has
19 disclosed Protected Material to any person or in any circumstance not authorized
20 under this Stipulated Protective Order, the Receiving Party must immediately (a)
21 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
22 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
23 the person or persons to whom unauthorized disclosures were made of all the terms
24 of this Order, and (d) request such person or persons to execute the
25 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
26 A.
27

28 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE

1 PROTECTED MATERIAL

2 When a Producing Party gives notice to Receiving Parties that certain
3 inadvertently produced material is subject to a claim of privilege or other
4 protection, the obligations of the Receiving Parties are those set forth in Federal
5 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
6 whatever procedure may be established in an e-discovery order that provides for
7 production without prior privilege review. Pursuant to Federal Rule of Evidence
8 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
9 of a communication or information covered by the attorney-client privilege or
10 work product protection, the parties may incorporate their agreement in the
11 stipulated protective order submitted to the court.
12

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
15 person to seek its modification by the court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in
19 this Stipulated Protective Order. Similarly, no Party waives any right to object on
20 any ground to use in evidence of any of the material covered by this Protective
21 Order.

22 12.3 Filing Protected Material. Without written permission from the
23 Designating Party or a court order secured after appropriate notice to all interested
24 persons, a Party may not file in the public record in this action any Protected
25 Material. A Party that seeks to file under seal any Protected Material must comply
26 with Civil Local Rule 79-5. Protected Material may only be filed under seal
27 pursuant to a court order authorizing the sealing of the specific Protected Material
28

1 at issue.

2 13. FINAL DISPOSITION

3 Within 60 days after the final disposition of this action, as defined in
4 paragraph 4, each Receiving Party must return all Protected Material to the
5 Producing Party or destroy such material. As used in this subdivision, “all
6 Protected Material” includes all copies, abstracts, compilations, summaries, and
7 any other format reproducing or capturing any of the Protected Material. Whether
8 the Protected Material is returned or destroyed, the Receiving Party, upon written
9 request from the Producing/Designating Party, must submit a written certification
10 to the Producing Party (and, if not the same person or entity, to the Designating
11 Party) by the 60 day deadline that (1) identifies (by category, where appropriate)
12 all the Protected Material that was returned or destroyed and (2) affirms that the
13 Receiving Party has not retained any copies, abstracts, compilations, summaries or
14 any other format reproducing or capturing any of the Protected Material.
15 Notwithstanding this provision, Counsel are entitled to retain an archival copy of
16 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
17 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
18 work product, and consultant and expert work product, even if such materials
19 contain Protected Material. Any such archival copies that contain or constitute
20 Protected Material remain subject to this Protective Order as set forth in Section 4
21 (DURATION).

22
23
24 **IT IS SO STIPULATED.**

25 Dated: May 9, 2019

Respectfully submitted,

27 /s/ Nicholas Bontrager

28 G. Thomas Martin, III (SBN 218456)

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*Attorney for Defendant,
Transworld Systems Inc.*

IT IS SO ORDERED.

Dated:5/13/2019



ALEXANDER F. MACKINNON
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of _____
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Central
7 District of California on the ____ day of _____, 2019, in the case of ***Jason***
8 ***Phipps v. Transworld Systems, Inc., Case No. 2:19-cv-00886***. I agree to comply
9 with and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.
15

16 I further agree to submit to the jurisdiction of the United States District
17 Court for the Central District of California for the purpose of enforcing the terms
18 of this Stipulated Protective Order, even if such enforcement proceedings occur
19 after termination of this action.

20 I hereby appoint _____ [print or type full name] of
21 _____ [print or type full address and
22 telephone number] as my California agent for service of process in connection with
23 this action or any proceedings related to enforcement of this Stipulated Protective
24 Order.
25

26 Date: _____

27 City and State where sworn and signed: _____

28 Printed name: _____

Signature: _____